

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

UPC HAWAII HOLDINGS, LLC, and)	DOCKET NO. 2008-0021
KAHEAWA WIND POWER II, LLC,)	
)	
Complainants,)	
)	
vs.)	
)	
MAUI ELECTRIC COMPANY, LIMITED, and)	
HAWAIIAN ELECTRIC COMPANY, INC.,)	
)	
Respondents.)	
_____)	

ORDER IDENTIFYING THE OUTSTANDING ISSUES TO BE RESOLVED
AND MODIFYING THE REMAINING PROCEDURES IN THIS DOCKET

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ORDER IDENTIFYING THE OUTSTANDING ISSUES TO BE RESOLVED
AND MODIFYING THE REMAINING PROCEDURES IN THIS DOCKET

By this Order, the commission amends the Stipulated Procedural Order filed by the parties¹ on March 20, 2008, which was approved with modifications by Order No. 24126, filed on April 7, 2008, to more specifically delineate the outstanding issues to be resolved and to modify the remaining procedures in this docket.

I.

Issues

By Order No. 24126, the commission approved with modifications the Stipulated Procedural Order filed by the

¹The parties to this docket are HAWAII HOLDINGS, LLC, dba FIRST WIND HAWAII, fka UPC HAWAII HOLDINGS, LLC ("First Wind"), KAHEAWA WIND POWER II, LLC ("KWP II") (jointly, "Complainants"); MAUI ELECTRIC COMPANY, LIMITED ("MECO"), HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, and SHELL WINDENERGY INC. ("Shell") (collectively, "Parties").

Parties. The Stipulated Procedural Order stated that "[t]he issues in this case are those raised by the pleadings in this docket and the issues may be further delineated by the Parties following the technical discussions. Any proposed delineation of the issues will be filed by the Parties by May 19, 2008."

As the Parties had not clearly identified in the Stipulated Procedural Order the specific issues to be addressed in this proceeding, the commission, by letter dated July 1, 2008, directed the Parties to "file with the Commission briefs addressing the legal issues as agreed to by the [P]arties by July 30, 2008."²

On July 30, 2008, the Parties filed their respective legal briefs in which they informed the commission that they had conferred by telephone conference and had agreed that each party would address the legal issues that it identified as relevant to its position and interests in this proceeding, and would submit its brief on those issues to the commission. Consistent with that agreement, in their respective legal briefs, Complainants, MECO/HECO, and the Consumer Advocate³ each submitted their own version of the issues to be addressed in this docket.

²Letter dated July 1, 2008, from the commission to the Parties, at 2.

³Shell did not identify any specific issues to be resolved in this proceeding except to state that "Shell acknowledges that the overall issue in the case relates to whether the negotiations that transpired between Complainants and HECO/MECO violates PURPA, the Commission's [sic] and Haw. Rev. Stat. 269-27.2, said issue is of primary concern to the rights of Complainants and its dealings with HECO/MECO."

Having reviewed the legal issues identified by those parties, the commission further delineates the issues in this docket as follows.

First, the commission adopts one of MECO/HECO's legal issues:

Whether First Wind's complaint is moot due to MECO stating in its written testimony (i.e., MECO T-1) that MECO is willing to reinitiate negotiations with First Wind and to conduct a study now regarding its proposal, provided that MECO's negotiations with Shell are not affected?

Second, the commission adopts the three issues identified by First Wind in its legal brief:

1. Did MECO and HECO violate the provisions of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") and the regulations issued thereunder (the "FERC Regulations") by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue negotiations for a power purchase agreement ("PPA") for a wind project on Maui only with Shell and not continue similar ongoing PPA negotiations with First Wind?

2. Did MECO and HECO violate the provisions of the Standards for Small Power Production and Cogeneration in the State of Hawaii (the "PUC Standards") issued by the Commission to implement PURPA and the FERC Regulations by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue such PPA negotiations only with Shell and not continue similar ongoing PPA negotiations with First Wind?

3. Did MECO and HECO violate the provisions of Haw. Rev. Stat. ("HRS") § 269-27.2 by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue such PPA negotiations only with Shell and not continue similar ongoing PPA negotiations with First Wind?

Accordingly, the Stipulated Procedural Order, as approved and modified by Order No. 24126, is further modified to

specifically delineate that the issues in this docket are as follows:

1. Whether First Wind's complaint is moot due to MECO stating in its written testimony (i.e., MECO T-1) that MECO is willing to reinitiate negotiations with First Wind and to conduct a study now regarding its proposal, provided that MECO's negotiations with Shell are not affected?

2. Did MECO and HECO violate the provisions of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") and the regulations issued thereunder (the "FERC Regulations") by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue negotiations for a power purchase agreement ("PPA") for a wind project on Maui only with Shell and not continue similar ongoing PPA negotiations with First Wind?

3. Did MECO and HECO violate the provisions of the Standards for Small Power Production and Cogeneration in the State of Hawaii (the "PUC Standards") issued by the Commission to implement PURPA and the FERC Regulations by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue such PPA negotiations only with Shell and not continue similar ongoing PPA negotiations with First Wind?

4. Did MECO and HECO violate the provisions of Haw. Rev. Stat. ("HRS") § 269-27.2 by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue such PPA negotiations only with Shell and not continue similar ongoing PPA negotiations with First Wind?

II.

Remaining Procedures

In addition to requiring the filing of legal briefs, the commission by letter dated July 1, 2008, also stated that the evidentiary hearing in this docket would be scheduled during the week of September 2, 2008. However, after reviewing the legal briefs filed by the Parties, and as a result of an informal telephone status conference between the Parties and commission

staff, it appears that the issues identified in Section I above can be resolved as a matter of law without the need for an evidentiary hearing.

Accordingly, to further the "just, speedy and inexpensive determination" of this proceeding,⁴ the commission has set the hearing on the issues to be resolved in this proceeding for September 4, 2008, at 9:30 a.m., in the commission's hearing room.

To assist in the resolution of the issues identified in Section I, the commission directs the Parties to file stipulated facts relevant to the commission's determination of the issues identified in Section I and identify all remaining relevant factual disputes, if any. In the event the Parties are unable to reach complete agreement on stipulated facts and any remaining relevant factual disputes, each party shall identify all undisputed facts and any disputed facts relevant to the commission's determination of the issues identified in Section I and to provide support for the undisputed nature of those facts through specific references to the record and testimonies submitted by the Parties in this docket. A good faith effort must be made to provide the commission with either stipulated or undisputed facts by August 29, 2008. Given the September 4, 2008 hearing date, the commission is unable to grant any extensions of the August 29 deadline.

⁴HAR § 6-61-1.

The commission will decide whether an evidentiary hearing is required and whether post hearing briefs will be permitted at a later date.

III.

Orders

THE COMMISSION ORDERS:

1. The Stipulated Procedural Order, as approved and modified by Order No. 24126, is further modified to specifically delineate that the issues in this docket are as follows:

1. Whether First Wind's complaint is moot due to MECO stating in its written testimony (i.e., MECO T-1) that MECO is willing to reinitiate negotiations with First Wind and to conduct a study now regarding its proposal, provided that MECO's negotiations with Shell are not affected?

2. Did MECO and HECO violate the provisions of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") and the regulations issued thereunder (the "FERC Regulations") by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue negotiations for a power purchase agreement ("PPA") for a wind project on Maui only with Shell and not continue similar ongoing PPA negotiations with First Wind?

3. Did MECO and HECO violate the provisions of the Standards for Small Power Production and Cogeneration in the State of Hawaii (the "PUC Standards") issued by the Commission to implement PURPA and the FERC Regulations by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue such PPA negotiations only with Shell and not continue similar ongoing PPA negotiations with First Wind?

4. Did MECO and HECO violate the provisions of Haw. Rev. Stat. ("HRS") § 269-27.2 by adopting and implementing their "structured negotiation format" by which MECO determined that it would continue such PPA negotiations only with Shell and not continue similar ongoing PPA negotiations with First Wind?

2. By August 29, 2008, the Parties shall file stipulated facts relevant to the commission's determination of the issues identified in Section I, and identify all remaining relevant factual disputes, if any; or, in the event, the Parties are unable to reach complete agreement on stipulated facts and any remaining factual disputes, each party shall identify all undisputed facts and any disputed facts relevant to the commission's determination of the issues identified in Section I and provide support for the undisputed nature of those facts through references to the record and testimonies submitted by the Parties in this docket.

DONE at Honolulu, Hawaii AUG 20 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

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Commission Counsel

2008-0021.eh

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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Certificate of Service

Page 2

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